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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1960.

No. 436.

U. S. MACHINERY MOVERS,
Petitioner,

vs.

JOHN P. BEBLER, Trustee, BISHOP MFG. CO.,
Respondent.

BRIEF

In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The opinion of the Circuit Court of Appeals, Eighth Circuit, is reported in [illegible] F. 2d [illegible].

JURISDICTION

The judgment of the Court of Appeals was entered on [illegible], 1960. The petition for writ of certiorari was filed [illegible], 1960. The jurisdiction of this Court is invoked under Title 28, U. S. Code, Section [illegible] and Rule [illegible] of this Court.

STATUTES AND RULES INVOLVED

Jurisdiction of Appellate Court, Bankruptcy Act (U. S. C. A. Sec. 47 (e)):

The Supreme Court of the United States is hereby vest with jurisdiction to review judgments, decrees and or of the United States courts of appeals in proceedi under this Act in accordance with the provisions of laws of the United States now in force or such as hereafter be enacted.

Rule 23 of the Revised Rules of Supreme Court, petition for Certiorari:

4. The failure of a petitioner to present with accura brevity, and clearness whatever is essential to a ready adequate understanding of the points requiring consider tion will be a sufficient reason for denying the petition

Chapter 786, Exceptions, Sec. 7861, 1935 Code of Io Bill of Exceptions:

The office of a bill of exceptions is to make the proc ings or evidence appear of record which would not oth wise so appear.

Chapter 577, 1935 Code of Iowa, Artisan's Lien:

Sec. 5771. Nature of Lien. Any person who repa any service or furnishes any material in the making, pairing, improving, or enhancing the value of any ma made personal property, with the assent of the ow express or implied, shall have a lien thereon for the ag or reasonable compensation for his service and mate while such property is lawfully in his possession, w possession he may retain until such compensation is p but such lien shall be subject to all prior liens or en

STATEMENT OF CASE

petitioners statement of the case includes matters
do not appear in the record, the record being made up
ely of pleadings, and not being in chronological order,
em it expedient to set out our statement of the case
h includes proceedings for a writ of replevin in a dis-
court of Iowa, an action in the United States District
rt in Iowa and proceedings in bankruptcy, in the same
t.

espondent, Bishop Manufacturing Company, brought
action in replevin in by filing petition and amendment
he District Court of Page County, Iowa, for immediate
session of an overhead crane, together with beams and
leys, from the petitioner and F & W Truck Line as-
ent for the petitioner (R. 22-24, 2-5).

Respondent filed amendment to its petition on February
1954, asking for damages, in addition to the writ of
devin.

n July 26, 1951, upon filing of bond, a writ of replevin
s issued directing the sheriff to deliver the possession
said personal property to the respondent (R. 11). Peti-
ner's filed answer (date of filing is not set out in the
cord) denying respondent was the owner and entitled
the immediate possession of the property and that it
rongfully obtained it, claimed a lien for services in dis-
ssembling, loading and transportation of the property (R.
-).

Petitioner filed reply to respondent's amendment (date
t set out in Record) reiterating its claim for a lien and
s damages (R. 31).

On November 18, 1954, order and decree of the Iowa
istrict Court was filed stating the cause came on for

final order and decree, said case having been tried to [illegible] heard" and finding that the petitioner was not employed by the respondent to dismantle and load the crane and that the petitioner failed to plead and indebtedness due it under the theory of quantum meruit that would give it a lien on the crane and that respondent was the owner of said crane and entitled to the immediate possession thereof, taxed the costs against the petitioner (R. [illegible]).

On January 21, 1955, petitioner filed civil action in the United States District Court, captioned "Amended Complaint for Money and for Damages (R. [illegible]), naming respondent, P & W Truck Lines, Sheriff of Pottawattamie County, Iowa, and Mutual Surety Company as defendants, and claiming an artisan's lien under Chapter 577, Iowa Code Annotated, against the crane for services for dismantling, loading and transporting the crane and parts and in the alternative the respondent be required to return said property or its market value, which is alleged to be $[illegible], and for reasonable damages, counsel fees and expenses against all the named defendants.

Respondent filed answer in two divisions denying that the matter in controversy exceeded $3,000.00, exclusive of interest and costs, denied that petitioner performed any dismantling services on behalf of and for the benefit of the petitioner and denied that petitioner was entitled to an artisan's lien under the Iowa statutes and further that under the statute they could not assert a counterclaim for damages and that the Iowa District Court had previously found petitioner had no lien and further that all the matters and items asserted in petitioner's complaint had been fully and finally adjudicated against petitioner (R. [illegible]).

On November 14, 1955, the United States District Court, taking in consideration the amount in controversy, the pleadings and pre-trial conference (R. [illegible]), entered its

error under fourteen different headings, among them be that other parties should have been made parties in bankruptcy proceedings such as the P & W Truck Line being guilty of conversion in surrendering the machi to respondent; that the sheriff was also guilty of conv sion and the surety company be declared liable on its b filed in the replevin action.

The Circuit Court of Appeals on June 27, 1950, affir (appendix, petitioner's petition) and petitioner seeks view by this court on a writ of certiorari.

ARGUMENT

Petitioner appears to be submitting this case on its merits and as though a writ had been granted rather than satisfying the requirements with respect to seeking a writ.

This case coming on for review from a bankruptcy proceeding, jurisdiction should be invoked under the provisions of the Bankruptcy Act and not under the provisions of Section 1254 (1) of the Judicial Code. (Jurisdiction of appellate courts, Bankruptcy Act [11 U. S. C. A., Sec. 47 (c)]; 8 C. J. S., Bankruptcy, Sections 605, 625; William R. Staats v. Security Trust and Saving Bank, 243 U. S. 121, 61 L. Ed. 632, 37 S. Ct. 366; In re Lehigh, 130 F. 2d 380, 78 U. S. App. D. C. 261)

In the event this court shall determine this is not a fatal jurisdictional defect, we urge that petitioner has wholly failed to bring itself within any of the considerations governing review on certiorari under Rule 19 (b), of the rules of this court, which petitioner also invokes. (54 Am. Jur., United States Courts, Sections 239, 230, 240, 242)

In their petition, petitioners fully fail to point out, or bring to the attention of this court wherein and in what manner the Court of Appeals decided a Federal question in a way to conflict with applicable decisions of this court, and from accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision, or to set forth or indicate reasons why this court within its broad discretion, should grant writ. They should not expect this court to determine from their petitions' blanket citations of constitutional provisions, Federal and State statutes, rules and decisions, as they endeavor to determine that the Circuit Court of Appeals was in error. That is their responsibility. (54 Am. Jur., United States Courts, Section 251)

Under their headings "Questions Requested to be [illegible] viewed" and "Reasons for Granting the Writ", they [illegible] plain about the actions of the sheriff in the replevin[illegible] tion in the Iowa District Court and in addition to [illegible] sheriff, other parties, the surety or the replevin bond [illegible] "others as may be reasonably necessary for a full hear[illegible] and determination" should be brought in as defendants [illegible] the bankruptcy proceedings. As stated in the opinion [illegible] the Circuit Court of Appeals in this case: "We can th[illegible] of nothing of less concern to that Court than whether [illegible] pellant has enforceable claims against complete strang[illegible] to the reorganization proceedings" (Appendix, Petition[illegible] Petition, p. 25).

They claim violations of the 5th and 14th amendme[illegible] of the Constitution, but wholly fail in any manner to [illegible] stantiate such violations.

They assert violations of interstate commerce under [illegible] constitution, but fully fail to show that there was in[illegible] state commerce. In fact, their Record clearly shows [illegible] the dismantling, loading and transporting of the pers[illegible] property all took place in Iowa (R. 9, 10, 14, 23, 36, 56, [illegible]

Petitioner is not satisfied with the judgments and or[illegible] of the Iowa and United States District Courts, but failed [illegible] appeal to the appellate courts of those courts and now [illegible] this court to review them.

They complain about the various courts in their [illegible] ments and orders finding that evidence and testi[illegible] was taken, but fail to set out in their Record trans[illegible] of what took place that brought about such findings [illegible] if no record was made at such times to supply the R[illegible] with such evidence, documentary or otherwise, by [illegible] exception, or other statutory substitute available to th[illegible] (Section 786.1, 1958 Code of Iowa, Bill of Exceptions; [illegible] v. Hemrick, 62 Iowa 414, 17 N. W. 594; 3 Am. Jur., A[illegible]

and Error, Sections 624, 625, 646 and 648; Order 47 of the General Orders in Bankruptcy, 11 U. S. C. A., Sec. 53.)

We did our best to read and digest their incomplete and sketchy cyclopedic and text citations and their reported cases and to apply them to the questions they requested to be reviewed and where we were able to find them, we were unable, in practically all instances, to see where they were in point, had any bearing, or were of any assistance to them.

This case appears to be one that comes squarely within the provisions of Rule 23 (4) of the rules of this court as sufficient reason for denying its petition in that the petitioner has wholly and fully failed to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points for which it seeks consideration.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this court, and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Des Moines, Iowa,
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